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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/481,685	06/07/95	GALLOWAY D	PA-1239

D3M1/0222

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EXAMINER	
KYRIAKAKIS,C	
ART UNIT	PAPER NUMBER
1315	4

DATE MAILED: 02/22/96

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary	Application No. 08/481,685	Applicant(s) Galloway et al.
	Examiner Christos S. Kyriakou	Group Art Unit 1315

☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-21 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-21 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-21 indefinite because claims 4-10, 13-15 and 20 recite layer thicknesses using the term **about** and claims 1 and 12 recite compositions using the term **about**. The term about as used is relative in nature and does not particularly point out and distinctly claim the subject matter.

2. Claims 4-10, 15, and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4-10, 15, and 20 are indefinite because they recite film thicknesses in units of gauges. Gauges are usually used as dimensions for railroads, shotguns, and wires and not for film thicknesses which are usually defined by more traditional units, microns or mils. It is not clear which of the above gauges applicant is claiming railroad gauges, shotgun gauges, or wire gauges to recite the film thicknesses.

3. Claim 20 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 20 is indefinite because the is

no antecedent basis for said fourth and fifth layers in claims 13 and 12 upon which claim 20 depend.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-2, 11-13, 16-18, and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Mumpower et al. (US 5,374,459). Mumpower discloses a multilayer laminate for packaging comprising two outer layers comprising a blend of a copolymer formed by a polymerization reaction of a single site catalyst (col. 2, lines 54-58) and EVA, two adhesive layers, and a core layer of ethylene vinyl alcohol (Abstract) which has been irradiated (col. 4, lines 26-29 and col. 5, lines 41-43).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the

time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

7. Claims 1-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Georgelos (US 5,397,603) in view of Newsome (US 4,457,960). Georgelos discloses multilayer films for forming packages produced from improved LLDPE/EVA blends with improved physical properties (col. 3, lines 26-34) prepared a single site catalyst (col. 4, lines 13-15). Georgelos teaches that LLDPE/EVA blends are commonly used for forming the outer layers of multilayer films (col. 2, lines 8-9) where the core layer is an oxygen barrier such as hydrolyzed ethylene vinyl acetate [ethylene vinyl alcohol] (col. 1, lines 47-53). Georgelos also teaches that such multilayer films may be irradiated to increase cross-linking and thus improve physical properties (col. 11, lines 40-46).

Newsome also discloses such the same multilayer structure with outer layers of LLDPE/EVA blends but produced from different catalyst systems and teaches that such a multilayer film may further include adhesive layers between the outer layers and the core, barrier layer (fig. 3 and col. 7, lines 35-38). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the improved LLDPE/EVA blends produced by single site catalysis taught by Georgelos in the LLDPE/EVA layer, adhesive layer, hydrolyzed ethylene vinyl acetate [ethylene vinyl alcohol] barrier layer, adhesive layer, and LLDPE/EVA layer disclosed by both Georgelos and Newsome in order to construct a package with outer layers with improved physical properties and to irradiate the films of the package in order to further improve the physical properties.

8. Claims 1-2, 4-12, 14-18, and 19 are rejected under 35 U.S.C. § 103 as being unpatentable over Newsome (US 4,457, 960)in view of Van der Sanden (Tappi Journal) and Tse et al. (US 4,894,107). Newsome discloses a multilayer film for packages comprising a barrier layer of ethylene vinyl alcohol (col. 3, lines 25-28) between layers of LLDPE/EVA blends (col. 2, lines 42-50). Newsome discloses that additional adhesive LLDPE/EVA layers may be used between the barrier layer and the outer LLDPE/EVA layers (fig. 3 and col. 7, lines 35-38).

Van der Sanden teaches that single site catalyst LDPEs have lower seal initiation temperatures, higher toughness and strength

than conventional LDPEs and EVAs (page 100, para. 2). Tse teaches the irradiation of polymers, particularly LLDPE/EVA blends, to induce cross-linking and thus increasing the hot strength and seal properties of films made from these polymers (col. 3, lines 55-61). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use single site catalysis to polymerize the LLDPE used in the package disclosed by Newsome in order to decrease the seal temperature and increase the strength and to also irradiate the films of the package in order to further increase hot strength and seal properties.

9. Claims 1, 3, 13, and 20-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Newsome in view of Van der Sanden and Tse et al. as discussed above and further in view of Rosenthal et al. (US 4,254,169). Rosenthal discloses ethylene vinyl acetate copolymer as a gas barrier layer (col. 2, lines 58-59). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to substitute ethylene vinyl acetate copolymer for ethylene vinyl alcohol in order to function as the gas barrier layer.

10. Further, it would have been an obvious matter of design choice to change the thicknesses of the layers since such modifications would have merely involved a mere change in the size of components. A change in size is generally recognized as

being within the ordinary skill in art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christos S. Kyriakou whose telephone number is (703)308-7548. The examiner can normally be reached on Monday through Friday from 8:30 AM to 6:00 PM.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-2351. The fax phone number for this Group is (703)305-5436.

Ellis P. Robinson

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SUPERVISORY PATENT EXAMINER
GROUP 1500

csk
February 19, 1996